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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re MONICA C., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent.

v.

MONICA C.,

Defendant and Appellant.

A104147

(San Francisco County
Super. Ct. No. JW036190)

Monica C. contends the juvenile court abused its discretion in committing her to the California Youth Authority. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

As part of a negotiated disposition, 17-year old Monica C. admitted assaulting Carmen P. with a deadly weapon, causing great bodily injury. Charges of attempted murder and sale of cocaine were dismissed. On March 30, 2003, Monica stabbed Carmen six or seven times in the abdomen and upper torso, causing life-threatening injuries. Several days later, Monica was arrested for selling crack cocaine to an undercover officer, and found in possession of a knife. She then admitted stabbing Carmen, but claimed she did so in self-defense.

During a two-day contested dispositional hearing, both sides presented extensive documentary and testimonial evidence. According to the probation department report, Monica's previous contacts involved two minor theft offenses. She was not attending school on a regular basis, had been referred to "dropout prevention," and was receiving poor grades. The probation officer recommended a CYA commitment, reporting: "This young lady, in a short period of time, has moved down a negative path very quickly. As a result . . . someone was seriously injured and almost died. The [probation officer] believes that this minor moved beyond the point of benefiting from Probation Department intervention at home. Even after participating in this incident, (which should have been a traumatic experience for someone who does not engage in this type of behavior on a regular basis), Monica continued to exhibit delinquent behavior until she was arrested in the midst of committing another crime. [¶] [The probation officer] believes that California Youth Authority is the appropriate setting for the minor at this time. A review of family dynamics indicates that out-of-home placement is necessary in this matter."

The probation officer testified that the department's multidisciplinary team did discuss alternate placement for Monica before recommending a CYA commitment. When asked by the minor's counsel whether any *specific* placements were considered, the probation officer answered, "That I recollect now, no." The officer explained that alternate placement was ruled out because of the seriousness of the assault and Monica's arrest several days later, during which she was armed with a knife.

The admissions director of the Excelsior Youth Center, a residential treatment facility in Colorado, testified on behalf of Monica and opined that she would benefit from treatment there. The program provides education and therapy. Although not a locked facility, Excelsior is "staff secure." Nevertheless, four or five young women escape each month. The average period of treatment is 13 months, although some young women stay several years. The director thought it "concerning" that Monica had engaged in a knife attack, but knew of others at Excelsior who had committed similar offenses. In addition to the director's testimony, the court reviewed Excelsior program material.

Additionally, the court received in evidence a 17-page report written by psychologist John Shields in which he opined that Monica could “really go either way at this point depending on the nature of the setting to which she is remanded,” and that her prognosis would improve in a setting “that stressed pro-social ideation and behavior.” Dr. Shields cautioned that Monica was at high risk to develop antisocial behavior if housed with more-delinquently oriented minors.

Monica testified that two months before she stabbed Carmen, she had been robbed and beaten by a group of girls. She initially spoke to police, but declined to cooperate further because she was afraid, and started carrying a knife for protection. She met Carmen about six weeks before the stabbing and claimed that Carmen threatened “to beat [her] ass.” On the night of the stabbing, sometime after midnight, Carmen approached Monica and “cussed” her. Monica left. About 30 minutes later, Monica was sitting outside when Carmen drove up and approached Monica. After the two exchanged words for about 10 minutes, Carmen walked to her car and opened the passenger door. Monica followed and saw Carmen with a knife raised in the air. Monica reached into her jacket pocket, retrieved her folding knife and quickly stabbed Carmen three times in the stomach. Carmen, who was dazed and bleeding, backed away. She then returned and swung her knife at Monica. Monica stabbed her again, then “walked away.” Monica discarded the knife, which had broken during the stabbing. She suffered no injuries.¹

Monica’s counsel urged placement at the Excelsior Youth Center. The court ruled: “The Court has considered a number of factors, including: The seriousness of the conduct, the need to protect society, the value of imposing discipline and accountability, the extent of the minor’s need for [a] structured institutional setting, facts relevant to this particular minor’s offenses or history—and in particular the Court listened very carefully to the fact that the minor had been jumped several months before this incident. She had initially contacted the police, but . . . she refused to prosecute and instead armed herself. [¶] She had the knife at the ready when this victim approached her. The victim is not at

¹ The victim did not testify at the dispositional hearing. A transcript of her statement to the police was admitted in evidence and reviewed by the court.

all blameless . . . [and] to a certain extent brought this on herself, but that does not excuse this minor's conduct. [¶] . . . After she hacked on the victim at least six or seven times, possibly more stab wounds, she walked away. She didn't even call 911, which is really egregious and inexcusable. And then a few days later, . . . she was out on the street again carrying a knife and selling drugs." The court concluded: "The Court is fully satisfied that the mental and physical conditions and qualifications of the minor are such as to render it probable that the minor will be benefitted by the reformatory, educational discipline or other treatment provided by the California Youth Authority."

DISCUSSION

Monica's sole contention on appeal is that the juvenile court abused its discretion in committing her to CYA. She claims the court failed to consider less restrictive placements and based its decision solely on the seriousness of the offense. We review a juvenile court's commitment decision for an abuse of discretion, indulging all reasonable inferences to support the lower court's decision. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.) "An appellate court will not lightly substitute its decision for that rendered by the juvenile court" and "will not disturb its findings when there is substantial evidence to support them." (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.)

Alternative placement options should generally be considered before committing a minor to CYA because of the danger of incarcerating unsophisticated youths with sophisticated criminals. (See *In re Anthony M.* (1981) 116 Cal.App.3d 491, 503 (*Anthony M.*)) "To support a CYA commitment, it is required that there be evidence in the record demonstrating probable benefit to the minor, and evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate." (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) However, "there is no absolute rule that a Youth Authority commitment should never be ordered unless less restrictive placements have been attempted." (*In re Ricky J.* (1981) 30 Cal.3d 176, 183.)

At the conclusion of the dispositional hearing, the court stated that it had weighed and considered less restrictive alternatives before finding them inappropriate. Monica

claims this finding is not supported by the evidence, and argues that *In re Teofilio A.*, *supra*, 210 Cal.App.3d 571, is analogous. Teofilio was a 17-year-old minor with no past criminal record who possessed narcotics for sale. The probation officer's CYA recommendation was based solely on the unsupported assertion that the minor had demonstrated criminal sophistication. The appellate court, finding the commitment to be an abuse of discretion, wrote: "The only evidence before the [juvenile] court was from the probation officer's report, and, therefore, we must presume the judge predicated his disposition upon this report. However, the report fails to show the probation officer considered less restrictive alternatives or why such alternatives would be ineffective or inappropriate. This leaves the record barren on this crucial issue." (*Id.* at p. 577.)

Monica argues that the probation officer's report is likewise devoid of any references to alternative placements considered or rejected by the probation department. However, unlike *In re Teofilio*, the possibility of a less restrictive placement *was* discussed by the department's multidisciplinary team, and rejected as inappropriate because of the gravity of Monica's offense.

More importantly, the court received evidence offered to demonstrate that the Excelsior Youth Center was an appropriate and less restrictive alternative. That testimony, including the frequency of escapes from the facility, supported the conclusion that the program would not be appropriate. Nevertheless, Monica argues that consideration of a single alternative placement is not sufficient to discharge the court's obligation. She relies on *Anthony M.*, *supra*, 116 Cal.App.3d 491, in which the court stated, "In the absence of an accompanying past criminal record or serious delinquent conduct, CYA commitment should not be selected unless alternative placement options are *adequately* explored." (*Id.* at p. 503, italics added.)

Anthony M., *supra*, 116 Cal.App.3d 491, however, involved the burglary of a liquor store. The opinion suggests that the extent to which alternate placements must be evaluated necessarily depends upon the individual case. Indeed, in a footnote, the *Anthony M.* court stated, "We recognize, however, that the circumstances of some offenses may evidence a disregard for life, and that such conduct justifies a CYA

commitment.” (*Id.* at p. 502, fn. 2.) Here the court considered an alternate placement, but concluded that any placement less than CYA was not appropriate. As the Supreme Court noted in *In re John H.* (1978) 21 Cal.3d 18, 27, “[T]he circumstances in a particular case may well suggest the desirability of a Youth Authority commitment despite the availability of such alternative dispositions as placement in a county camp or ranch.”

Additionally, Monica claims the court abused its discretion by basing its commitment decision solely on the seriousness of the offense. She points out that she has no serious or violent criminal history. She acknowledges that in some cases a CYA commitment has been ordered for first-time offenders without attempting less restrictive alternatives, but claims that courts do so “only if [the first-time offender’s] crime involves serious and unmitigated use of force or violence.” (*Italics omitted.*) Monica argues that her assault of Carmen, while very serious, “represented a couple of days of aberrant behavior,” and claims the court considered the victim’s conduct to be a “mitigating circumstance.”

Monica reads the juvenile court’s ruling too narrowly. In discussing the offense, the court considered not only its egregious nature, but the minor’s failure to accept responsibility, her need for discipline and the danger she poses to society. Monica repeatedly stabbed the victim so forcefully that the knife broke. The court noted that Monica’s response to her own assault two months earlier was to arm herself instead of cooperating with the prosecution. As a result, she “had the knife at the ready” as soon as she was confronted by Carmen. After nearly killing the victim, Monica walked away, showing no concern or remorse. Her involvement came to light only when she was arrested several days later when, as the court observed, “she was out on the street again carrying a knife and selling drugs.”

In assessing the “probable benefit” of a CYA commitment a juvenile court may consider the extent to which punishment should be imposed for rehabilitative purposes, to hold delinquent minors accountable for their behavior and to protect the public. (Welf. & Inst. Code, § 202, subd. (b) [guidance appropriate for delinquent minors “may include

punishment that is consistent with the rehabilitative objectives of this chapter”]; *In re Michael D.*, *supra*, 188 Cal.App.3d at p. 1396 [in enacting 1984 amendments to section 202, “the Legislature intended to place greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety.”]) Here, the court properly determined that the rehabilitative punishment of CYA is appropriate.

Additionally, the juvenile court explained that its decision was based upon the suitability of the reformatory educational and disciplinary treatment offered by a CYA placement. Monica’s school attendance and performance were poor and there was sufficient evidence from which the court could infer that Monica had little supervision and structure at home. The evidence supports the court’s conclusion that Monica could benefit from the programs, professional help, intensive counseling and school programs offered at CYA.²

DISPOSITION

The orders of the juvenile court are affirmed.

Corrigan, J.

We concur:

McGuiness, P.J.

Pollak, J.

² Monica challenges the juvenile court’s conclusion that she would benefit from CYA’s structured programs on the basis of recent negative publicity and several documents, of which appellate counsel asks that we take judicial notice. These documents were not before the juvenile court. Indeed, some of them were issued after the dispositional hearing in this case. Monica seeks a reversal based on information completely outside the record. We decline to do so and deny the request for judicial notice. (See *People v. Sanders* (2003) 31 Cal.4th 318, 323, fn. 1; *People v. Amador* (2000) 24 Cal.4th 387, 394.)